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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,850	11/02/2001	Sreekumar Pillai	J6673(C)	6359

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT PAPER NUMBER

1617

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/003,850	PILLAI ET AL.	
	Examiner	Art Unit	
	Shobha Kantamneni	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 5-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 07/26/2004 has been entered.

Claims 1, 2, and 5-6 are pending. The Amendment filed on 04/28/2004 amended claim 1.

Applicant's amendment to claim 1 has overcome the rejection of claims 1-2 under 35 USC 103 as being unpatentable over Cohen et al., Sichak and Weidenboerner (337) et al. in view of Soares et al.

The rejection of claims 5-6 under 35 USC 103 as being unpatentable over Cohen et al., Sichak and Weidenboerner (337) et al. in view of Soares et al. is herein withdrawn.

The following new rejections are made.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soares et al. (US 5,914,116) in view of Pillai et al. (US 6,548,072).

The instant claims are directed toward a first composition comprising retinoid, and a second composition comprising a retinoid booster and phytoestrogen.

Soares et al. teaches a method for a skin treatment comprising a topical application regime and a respective product. The product includes a first composition, which can be a cleanser composition or self-tanning or skin lightener or sunscreen composition containing at least one active, and second composition, a Anti-wrinkle composition including a second active which can be 0.1 % of Vitamin A palmitate (retinol). Anti-wrinkle compositions will contain 0.00001 to 2 % of retinoids such as retinol, retinoic acid. See column 4, lines 21-25, and lines 59-60. The first and second compositions are stored in respective separate containers, which are joined together, see column 7 and 8, Example 1, column 11, lines 32-36, and abstract. The cleanser compositions contain 0.1 % of phytoestrogen such as genistein. See column 9, TABLE IV. Soares also teaches that the compositions can contain 0.5 to 80 % by weight of arachidic acid, linoleic acid, myristic acid etc. See column 6, lines 2-4. The compositions can also contain compounds to protect against microorganisms. See column 7,

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lines 29-30. Soares et al do not specifically teach phytoestrogens and retinoid booster together in the composition. Soares et al. do not specifically teach the presence of retinoid, and retinoid booster, phytoestrogens, in separate compartments.

Pillai et al. US 6,548,072 teach Skin care compositions containing 5 % w/w of CHICK PEA Extract and 0.01 % w/w of Linoleic acid for improving the appearance of wrinkled, dry, flaky or aged skin.. See abstract, column 12, EXAMPLE 10. Pillai teaches that Organic chick pea extracts are phytoestrogens such as formononetin, daidzein, biochanin A etc. See column 2, lines 24-27.

It is generally considered *prima facie* obvious to combine compounds each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. As shown by recited teachings of Soares et al. and Pillai et al., the instant claims contain two compositions used for improvement of skin appearance. *In re Kerkhoven*, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

Claim 1-2, and 5-6 require a topical composition, individually packaged to provide those therapeutic benefits inherent in each composition individually. Soares et al teach skin care formulations employing a dual container system for multi composition use. Those formulation taught by Soares et al employ retinoid compositions useful for anti-wrinkle dermal application. Soares also teach anti-wrinkle composition containing retinoid and cleanser containing Genistein in separate compositions. See TABLE III, column 8, and TABLE IV, column 9.

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Possessing this teaching the skilled artisan would have been motivated to employ the dual container dermal administration system for the application of dermal medicaments, while enjoying those benefits inherent in sequential application as set forth in Soares et al claim 1. One would be motivated to use a Anti-wrinkle composition containing retinoid and sequentially use a cleanser composition containing retinoid booster and phytoestrogen, to potentiate the activity of the retinoid and to obtain synergism. The skilled artisan would have seen the separate packaging teachings Soares et al. useful for individual application of dermal retinoic acid compositions, and the administration of these compositions dermally and individually.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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SUPERVISORY PATENT EXAMINER